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TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
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OFFICE OF PETITIONS

In re Application of :
Dowdal : DECISION ON PETITION
Application No. 09/605,422 :
For: June 27, 2000 :
Atty. Dkt. No.: 1.046US :
:

This is a decision on the "PETITION TO WITHDRAW ABANDONMENT," filed June 12, 2006.

This matter is being treated under 37 CFR 1.137(b) as a petition to revive for unintentional abandonment¹.

The petition under 37 CFR 1.137(b) is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency decision.

This application became abandoned January 3, 2004 for failure to timely reply to the non-final Office action mailed October 2, 2004. The non-final Office action set a three month shortened statutory period of time for reply. No petition for extension of time was timely submitted. Notice of Abandonment was mailed December 13, 2004.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for

¹ The petition is not being treated under 37 CFR 1.181 (petition to withdraw the holding of abandonment) or 37 CFR 1.137(a) (petition to revive unavoidably abandoned application) as the petition is accompanied by no documentary evidence. The petition, however, does include a statement of unintentional abandonment. Therefore, the matter is being treated pursuant to 37 CFR 1.137(b), required fee having been charged to petitioner's deposit account.

the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition fails to satisfy requirement (1) set forth above. A proper reply to the non-final Office action has not been submitted. The request for continued examination submitted herewith is improper as the instant application is not under final rejection. Any renewed petition must be accompanied by an appropriate reply.

The above-identified application has been abandoned for an extended period of time. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith in accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. See, Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178; 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

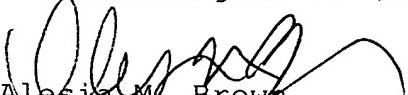
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By facsimile: (571) 273-8300

By hand: U.S. Patent and Trademark Office
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Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to
the undersigned at (571) 272-3205.



Alecia M. Brown
Petitions Attorney
Office of Petitions